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Attorneys for Plaintiffs, JASON LEE and NANCY LEE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JASON LEE, individually and as
personal representative of the Estate of
Catherine Yi, deceased; and NANCY
LEE, individually,

Plaintiff(s),

vs.

SCUBA MANIA, INC., d.b.a. Beach
Cities Scuba; ANTONY FALZONE;
JAMES GRUNDY; RANDY SMITH,
JOHN MOSS; C & N LINS, INC., d.b.a.
CATALINA DIVERS SUPPLY; and
DOES 1 through 100, inclusive,

Defendant(s).

Case No.: 2:19-cv-00562 FMO-KS

JOINT RULE 26(f) REPORT

SCHEDULING CONFERENCE

Date: March 21, 2019
Time: 10:00 a.m.
Courtroom: 6D
Hon. Judge Fernando M. Olguin

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Pursuant to Federal Rule of Civil Procedure Rule 26(f), Local Rule 26-1, and the Court's February 8, 2019 Order, Plaintiffs JASON LEE and NANCY LEE ("Plaintiffs") and Defendants ANTHONY FALZONE, JAMES GRUNDY, RANDY SMITH, JOHN MOSS, C & N LINS INC. dba CATALINA DIVERS SUPPLY, RIVIERA CHARTERS, LLC, and M/V RIVIERA (collectively, "Defendants"), through their attorneys of record, having conducted a conference in accordance with Rule 26(f) on February 27, 2019, hereby submit the following Joint Rule 26(f) Report:

a. Statement of the Case:

1. Plaintiffs:

Decedent Catherine Yi ("Yi") and her fiancé, Andrew Stroud ("Stroud"), sought to become certified scuba divers. They enrolled in Defendant SCUBA MANIA, LLC dba BEACH CITIES SCUBA's Open Water Certification course. Yi and Stroud attended and completed their classroom and pool portions of their course. Thereafter, they participated in their required open water dives on two separate days. The open water dives were conducted off the vessel *M/V Riviera*. They were taught by Defendant BEACH CITIES SCUBA'S instructors (also named defendants in the action), but deposition testimony later revealed the crewmembers and divemasters aboard the *M/V Riviera* at least supervised portions of the open water dives. Despite not competently performing all the skills required to obtain their certifications, Defendants certified Plaintiff and Yi anyway.

Later, Yi and Stroud travelled to Catalina Island to dive by themselves for the first time. They rented equipment from Defendant CATALINA DIVERS SUPPLY, LLC, which was in poor condition and malfunctioning. During the course of their dive, Yi could not establish positive buoyancy and began sinking, ultimately causing her to panic and drown. In the course of attempting to rescue Yi, Stroud also suffered sinus barotrauma, pain, suffering, and emotional distress.

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1 **2. Defendants:**

2 This is a recreational SCUBA case involving a recreational SCUBA dive, from
3 land, on Catalina. The incident that resulted in Stroud's injury and Yi's death started
4 on land, in Catalina. No boat was involved. It had no potential to impact on maritime
5 commerce and was unrelated to any traditional maritime activity. Plaintiff Stroud and
6 his fiancé, Yi, the decedent, were certified divers when they went to Catalina where
7 this incident occurred. Yi had become certified 2 months prior and Stroud had
8 become certified approximately 10 years earlier. That fact was concealed by Stroud.
9 Both were enrolled in the PADI basic certification course. Deposition testimony has
10 established the captain and divemaster aboard the *M. V. Riviera* had over-all
11 responsibility for the activities on the vessel. Dive boat crew are responsible for the
12 safe boarding, transportation, launching and recovery of divers and did not conduct
13 scuba diving instruction.

14 When at Catalina two months after their certification, Mr. Stroud and Ms. Yi
15 hired a dive guide to take them on a familiarization dive in the Avalon Underwater
16 Park. That guide told them they were not ready to dive in the park on their own. Mr.
17 Stroud and Ms. Yi ignored that warning, rented dive gear the next day and made the
18 fatal scuba dive in which Ms. Yi became entangled in kelp, drowned and Mr. Stroud
19 panicked and fled to the surface to call for help.

20 As is required in the industry, and therefore common, both Stroud and Yi read
21 and signed waivers and releases when they enrolled in the PADI certification courses
22 and each time before they boarded the M/V Riviera for each of their checkout dives.
23 These releases are valid and enforceable absent gross negligence, which does not
24 exist in this case.

25 Stroud concealed at least one medical condition on his medical questionnaire.
26 Namely, that he was a lifelong asthmatic, which contributed to Yi's death.

27 Both Stroud and Yi were properly trained and certified and both received
28 working and safe SCUBA gear, which they rented on the date of the accident.

1 **b. Subject Matter Jurisdiction:**

2 Plaintiffs filed this action in state court (the Los Angeles County Superior
3 Court), alleging that admiralty jurisdiction existed and that maritime law should
4 therefore be applied to the case. Plaintiffs chose to sue in state court under the
5 “Savings to Suitors” clause. The case was designated complex and transferred to the
6 Torrance Courthouse. Defendants all filed Defendant motions to strike the admiralty
7 jurisdiction allegations and punitive allegations from Plaintiffs’ First Amended
8 Complaint. Superior Court Judge See granted the motions to strike the admiralty
9 jurisdiction and punitive damage allegations and granted the plaintiffs leave to
10 amend.

11 Plaintiffs then amended their complaints and, amongst other things, named the
12 owner of the *M/V Riviera* as well as the *M/V Riviera*, itself as defendants in their
13 Second Amended Complaint. In response, Defendant BEACH CITIES SCUBA
14 removed the case to this court, alleging that the federal court had exclusive
15 jurisdiction by virtue of the *in rem* defendant, the *M/V Riviera*. Plaintiffs have
16 contended that naming the vessel as a defendant in the case was done in error.
17 Plaintiffs have offered to stipulate to dismiss the vessel from the action with prejudice
18 and remand the case back to the Torrance Courthouse, but Defendants have refused to
19 do so contending that the case should remain in federal court for the reasons stated in
20 their oppositions to the motions to remand that Plaintiffs have now filed and which is
21 set for hearing on March 21, 2019.

22 **c. Legal Issues:**

23 1) Jurisdiction; 2) choice of law; 3) causation; 4) enforceability of a release of
24 liability; and 5) assumption of risk.

25 **d. Parties, Evidence, etc.:**

26 **1. Parties** - Plaintiffs Jason Lee and Nancy Lee; Defendants Anthony
27 Falzone, James Grundy, Randy Smith, John Moss, C & N Lins, Inc. dba Catalina
28 Divers Supply, Riviera Charters, LLC and M/V Riviera.

1 **2. Percipient witnesses** - Plaintiff Andrew Stroud; Defendants Anthony
2 Falzone, James Grundy, Randy Smith, and John Moss; LASD Sergeant Dave Carver;
3 David Mansfield; Robert Kuhns; Jeff Wold; Chance Dunn, as well the other
4 investigating deputies of the LASD; and individuals identified by the parties
5 throughout the course of discovery.

6 **3. Documents** - Catherin Yi's medical records; records pertaining to
7 Catherine Yi's employment; the Investigative Report of the LASD, as well as all
8 documents and things included therein; Catherine Yi and Andrew Stroud's training
9 records; all documents produced in discovery.

10 **e. Insurance:** Defendant BEACH CITIES SCUBA and its instructors are
11 insured by the Lexington Insurance Company.

12 **f. Magistrate Judge:**

13 The parties consent to a mutually agreeable magistrate judge from the court's
14 Voluntary Consent List to preside over this action for all purpose, including trial.

15 **g. Discovery Plan:**

16 **1. Depositions** – The parties anticipate taking several additional
17 depositions in addition to expert witness depositions.

18 **2. Written Discovery** – The parties have completed the vast majority of
19 their written discovery, but will likely serve some additional interrogatories and/or
20 document requests and supplemental interrogatories.

21 **3. Discovery cut-off** - The parties request a discovery cut-off date in
22 accordance with the Court's usual time interval in advance of trial.

23 **4. Expert Discovery** - The parties request that expert witness disclosures
24 and expert discovery cut-off shall be in accordance with the Court's usual time
25 interval in advance of trial.

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1 **h. Motions:**

2 Plaintiff's Motion to Remand is pending. Defendants will file Rule 56
3 motions.

4 **i. Class Certification:**

5 Non applicable.

6 **j. Dispositive Motions:**

7 Defendants anticipate filing Rule 56 motions.

8 **k. Settlement/ADR:**

9 The parties have private mediation scheduled for April 4, 2019 with JAMS.

10 **l. Pretrial Conference and Trial:**

11 The parties request a pretrial conference in accordance with the Court's usual
12 time interval in advance of trial. The case should be ready for trial by January of
13 2020.

14 **m. Trial Estimate:**

15 Plaintiffs contend that the case will be tried to a jury. Defendants contend that
16 the in rem claim, if it remains, can only be tried to the court and that the remaining
17 claims, under the court's supplemental jurisdiction, will likely be tried to a jury if
18 they are state claims but if they are admiralty claims then defendants reserve the right
19 to contest the jury demand. The parties estimate a 12 day trial due to the number of
20 witnesses (percipient and expert), the nature of the case, and the number and type of
21 exhibits to be introduced and explained at trial.

22 **n. Trial Counsel:**

23 Trial counsel for Plaintiffs will be Richard A. Lesser and Francis S. Ryu. Trial
24 counsel for Defendants will be Mark Williams, Neil S. Lerner, and Tom Griffin.

25 **o. Independent Expert or Master:**

26 The parties do not anticipate needing the appointment of an independent expert
27 or master.

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1 **p. Other Issues:**

2 The parties have taken many depositions to date and stipulate to the admission
3 of those depositions for all purposes in this court.

4
5 DATED: March 6, 2019

LESSER & ASSOCIATES, PLC

6
7 By: /s/ Richard A. Lesser
8 Richard A. Lesser, Esq.
9 Attorney for Plaintiffs

10 DATED: March 6, 2019

RYU LAW FIRM

11
12 By: /s/ Francis S. Ryu
13 Francis S. Ryu, Esq.
14 Attorney for Plaintiffs

15 DATED: March 6, 2019

LAFOLLETE JOHNSON

16
17 By: /s/ Mark M. Williams
18 Mark M. Williams, Esq.
19 Attorney for Defendants,
20 Scuba Mania, Inc., John Moss,
21 James Grundy, M. V. Riviera,
22 Riviera Charters, LLC

23 DATED: March 6, 2019

COX WOOTON LERNER
GRIFFIN & HANSEN, LLP

24
25 By: /s/ Neil S. Lerner
26 Neil S. Lerner, Esq.
27 Attorney for Defendants,
28 Anthony Falzone, Randy Smith

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1 DATED: March 6, 2019

COX WOOTTON LERNER
GRIFFIN & HANSEN, LLP

4 By: /s/ Mina M. Morkos
Mina M. Morkos, Esq.
Attorney for Defendants,
Anthony Falzone, Randy Smith

7 DATED: March 6, 2019

NELSON GRIFFIN, LLP

9 By: /s/ Thomas J. Griffin
Thomas J. Griffin, Esq.
Attorney for Defendant,
C & N Lins Inc., dba Catalina
Divers Supply

ATTESTATION

I, Richard A. Lesser, attest that the signatories listed above, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

By: /s/ Richard A. Lesser
Richard A. Lesser, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2019, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which sent notification of such filing to all counsel of record.

By: /s/ Richard A. Lesser
Richard A. Lesser, Esq.